

**AGREEMENT BETWEEN
THE TOWN OF AMHERST
AND**

AMHERST COMMUNITY TELEVISION, INC.

October 15, 1996

Amherst, Massachusetts

Section 1 --- DEFINITIONS

For the purpose of this Agreement, the following words, terms, phrases, and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense included the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word shall is always mandatory and not merely directory, except where noted. Where the following definitions are in conflict with definitions in law, it is the express intent that the definition in federal law shall take precedence.

(a) ACTV: Amherst Community Television, Inc.

(b) Cable Service: The one-way transmission to Subscribers of video programming or Other Programming Services, together with Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(c) Cable Television System or Cable System: A facility consisting of a set of closed transmission paths and associated Signal generation, reception and control equipment designed to provide Cable Service (including video programming) to multiple Subscribers within a community unless such system does not use any public rights of way.

(d) Channel or Video Channel: A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel. With respect to PEG Channel, I-Net and I-Loop channel requirements, the definition of channel shall also mean a minimum allocation of 6 Mhz of bandwidth.

(e) Contracting Authority: The Town Manager of the Town of Amherst.

(f) Educational Channel: Any channel, or portion thereof, which has been allocated for use by the Public Schools or its designee(s).

(g) Effective Date: October 15, 1996.

(h) FCC: The acronym for the Federal Communications Commission or any successor agency.

(i) Government Channel: Any channel, or portion thereof, which has been allocated for use by the Town, the Contracting Authority or its designee(s).

(j) Institutional Network: A communication network which is constructed and operated by the cable operator and which is generally available only to Subscribers who are not residential Subscribers.

1 (k) PEG: The acronym for Public, Educational, and Governmental; used in conjunction with Access Chan-
2 nels, support and facilities.

3 (l) PEG Access Channels: Any Channel(s) made available for the presentation of PEG Access program-
4 ming.

5 (m) Programming or Video Programming: Programming provided by, or generally considered comparable
6 to programming provided by, a television broadcast station.

7 (n) Public Access Channel(s): Any channel, or portion thereof, which has been allocated for use by mem-
8 bers of the community to communicate their activities, opinions and ideas without interference or censor-
9 ship through the creation of cable television programming and other means.

10 (o) Public Schools: The Amherst-Pelham Regional School District and the Amherst Public Schools.

11 (p) Renewal License: The non-exclusive Cable Television License granted to Cox Communications Am-
12 herst, Inc. by an instrument effective July 1, 1996.

13 (q) Subscriber: Any person, firm, corporation or other entity who or which elects to subscribe to for any
14 purpose, a Cable Service provided by the Licensee by means of, or in connection with, the Cable Televi-
15 sion System.

16 (r) Town: The Town of Amherst, Massachusetts.

18 Section 2: DESIGNATION OF ACCESS PROVIDER

19 Subject to the terms and conditions herein, the Contracting Authority hereby designates Amherst Community
20 Television, Inc. as the Designated Access Provider under the terms of the Renewal License effective July 1,
21 1996 granted by the Town to Cox Communications, Inc.

23 Section 3: DURATION

24 This Agreement, which supersedes the Agreement on contract extension signed by the Town Manager and the
25 President of ACTV dated June 23, 1996, shall be effective upon the date of its execution and, providing the
26 Amherst Town Meeting shall vote to waive the requirements of MGL Ch.30B with respect to the length of
27 contracts into which the Town is permitted to enter, shall terminate upon the expiration of the Renewal
28 License, or in the event that Town Meeting does not so agree, at the end of the maximum period of time
29 permitted to the Town for such contracts, or at such time as is provided in Section 4 of this Agreement.

31 Section 4: TERMINATION

32 4.1 This Agreement shall terminate upon the adjudication of the bankruptcy of ACTV.

33 4.2 This Agreement may terminate if the Contracting Authority determines that ACTV has failed to fulfill its
34 responsibilities pursuant to the terms and conditions herein.

35 (a) Before any such termination, ACTV shall be given a minimum of sixty (60) days advance written
36 notice, which notice shall set forth the reasons for the proposed termination and shall advise ACTV that it will
37 be provided an opportunity to be heard by the Contracting Authority before any such action is taken. Said

1 notice shall state the date, time, and place of such hearing. In no event shall such hearing be held less than
2 thirty (30) days following delivery of such notice to ACTV.

3 (b) At said hearing, ACTV will be provided an opportunity to respond to the reasons for the proposed
4 termination and to discuss them with the Contracting Authority. ACTV shall be entitled to reply in writing to
5 said reasons, a copy of which response shall be delivered to the Contracting Authority no later than thirty (30)
6 days following said hearing. The Contracting Authority shall make no decision concerning termination until it
7 has considered said response.

8 4.3. ACTV may terminate this Agreement by a majority vote of its Board of Director at a regular meeting
9 where this item shall appear on the agenda, as specified by the By-Laws of the Corporation.

10 (a) ACTV shall provide the Contracting Authority with at least sixty (60) days advance written notice of
11 its intention to terminate this Agreement. Said notice shall set forth the reasons for the proposed termination,
12 and shall advise the Contracting Authority that it shall be provided an opportunity to be heard by the Board of
13 Directors regarding such proposed termination before any action is taken. Said notice shall state the date time,
14 and place at which said hearing shall occur. In no event shall said hearing be held less than thirty (30) days
15 following receipt of such notice to the Contracting Authority.

16 (b) At said hearing, the Contracting Authority shall be provided an opportunity to respond to the reasons
17 for the proposed termination and an opportunity to discuss them with the Board of Directors. The Contracting
18 Authority shall be entitled to reply in writing to said causes and reasons for termination, a copy of which shall
19 be delivered to the Board of Directors no later than thirty (30) days following said hearing. The Board of
20 Directors shall make no decision concerning termination until it has considered said response.

21 4.4. Under the terms of §7.4(b) of the Renewal License, all equipment purchased by the Town or its
22 designee(s) under the terms of this license shall be the property of the Town. Upon termination of this
23 Agreement, equipment so purchased can not be used to satisfy any present or future indebtedness of ACTV
24 and is subject to continuing access by the Town, including the right of removal.

26 Section 5: RENEWAL

27 This Agreement may be renewed upon the expiration of this Agreement in accordance with the provisions
28 of MGL Ch.30B. The process leading to renewal of this Agreement shall be initiated by a written request
29 from ACTV to the Contracting Authority at least one year prior to the end of this Agreement. The request
30 shall include comments on the current Agreement and any items for discussion as part of the renewal
31 process.

33 Section 6. OBLIGATIONS OF ACTV

34 6.1. ACTV will maintain its status as a 501(c)(3) non-profit educational corporation eligible for exemption from
35 taxes under federal and state law.

6.2. ACTV will maintain a governance structure (Board of Directors) which recognizes its obligations to the Town, the schools and the community and which maintains a balance among its public, educational and governmental access responsibilities.

6.3. The purpose of public access is to allow members of the community to communicate their activities, opinions and ideas without interference or censorship through the creation of cable television programming and other means. With respect to the Public Access Channel(s), ACTV will

(a) be responsible for programming free from censorship of program content;

(b) develop and promote programming including but not limited to cultural, literary, educational and public affairs programming on the Public Access Channel;

(c) make the public access facilities and channels available in a non-discriminatory manner to encourage the exchange of ideas and opinions on a broad range of topics;

(d) be responsible for fund-raising to supplement Public Access operations; and

(e) be responsible for consistent outreach to the various segments of the community to encourage use of the public access channel.

6.4. With respect to the Governmental and Educational Access Channels, ACTV and the Contracting Authority and the Public Schools respectively will mutually agree on the responsibilities of ACTV, which may include asking ACTV to follow the policies and guidelines for programming the Governmental and Educational Channels established by the Contracting Authority and the Public Schools respectively.

6.5. ACTV will manage and operate the PEG Access channels, equipment and facilities on a non-discriminatory, non-commercial basis. In managing and operating the channels, ACTV will carry out such activities as

(a) holding workshops for the purpose of teaching television skills to individuals and community groups;

(b) managing funds designated for PEG access television;

(c) scheduling PEG cablecasting;

(d) managing and maintaining PEG facilities and equipment;

(e) being responsible for ensuring an acceptable level of technical quality of all programs cablecast on its system, pursuant to FCC regulations. ACTV is not obligated to cablecast any PEG Access program that does not meet the FCC technical standards. However, a decision not to cablecast a program due to technical problems shall in no way involve consideration of the actual content of the program itself. ACTV shall not be held responsible for technical problems under control of the cable system.

6.6. ACTV shall promulgate regulations governing PEG access including but not limited to levels of service, use of equipment and facilities, training programs, membership, outreach activities, cablecasting procedures and operating policies and procedures.

6.7. ACTV may charge reasonable fees for services of ACTV or its employees or agents or the use of ACTV facilities as necessary. Such fees shall not be used to interfere with or censor a user who seeks to produce public access programming. Use of equipment, facilities, and access to training shall not be denied on the basis of inability to pay such fees.

1 6.8. ACTV shall maintain a log of programming that is cablecast on the PEG channels, and a record of PEG
2 producers. Logs shall be available for public inspection and retained by ACTV for a minimum of three (3)
3 years.

4 6.9. Within ninety (90) days after the end of ACTV's fiscal year, ACTV shall provide at its own expense
5 financial and operating reports to the Contracting Authority and the Cable Advisory Committee. The
6 operating report shall reflect input received from community members and organizations and will serve as
7 a means of evaluating the performance of ACTV and identifying new goals and directions. This report
8 shall contain at least the following items:

- 9 (a) a summary of the activities in the development of the PEG access program;
- 10 (b) a schedule of rates and charges for PEG Access related activities;
- 11 (c) the most recent budget report as provided to ACTV Board;
- 12 (d) changes in staff roster or staff job descriptions from prior reports;
- 13 (e) outreach presentations, mailings, surveys and results;
- 14 (f) fundraising;
- 15 (g) training;
- 16 (h) facility and equipment use;
- 17 (i) PEG access programming by channel; and
- 18 (j) PEG programming developed by ACTV staff.

19 6.10. ACTV shall cablecast Town Meetings, and subject to capacity to do so, meetings of the Select Board,
20 providing, however, that if ACTV is unable in any instance to do so, it shall notify the Contracting
21 Authority. At such time as equipment and resources are available, Town Meeting and Select Board
22 meetings will be transmitted on the Governmental Access Channel. Tapes of Town Meeting will be kept at
23 ACTV for three (3) years and then transferred to the Jones Library.

24 6.11. The President and Executive Director of ACTV shall make themselves available from time to time to
25 advise the Contracting Authority on matters concerning PEG Access.

26 6.12. ACTV shall engage in outreach activities designed to inform Town residents and organizations about
27 the availability and use of PEG access channels and to encourage their use.

28 6.13. ACTV will keep a current data base of access programs in its library and make it available during
29 normal business hours.

30 6.14. ACTV will indemnify and hold harmless the Town and its elected officials, appointed boards and
31 commissions, employees, and agents from and against all losses, damages, liabilities, claims, demands,
32 judgments, settlements, costs, and expenses including penalties, interest and reasonable attorneys' fees and
33 disbursements resulting from or arising out of a) any breach by ACTV of its obligations under this
34 Agreement; b) any personal injury or property damage occurring after the effective date of this Agreement
35 arising out of the use by any person of the facilities or equipment owned or leased by ACTV (other than
36 personal injury or property damage resulting from the negligence or willful misconduct of the Town or its
37 elected officials, members of appointed boards and commissions, employees or agents); or c) any

1 personnel grievances concerning the hiring, firing and conditions of employment of ACTV employees.
2 Except where ACTV is primarily at fault under Massachusetts statute and case law, or under common law
3 principles, ACTV's obligation under this section shall not apply to claims, demands, actions or suits arising
4 from the Town's government or educational access cablecasting activities.

5 6.15. ACTV shall require every access user to indemnify the Town and ACTV and hold both harmless
6 against any claims arising out of any program or program material produced and/or cablecast, including but
7 not limited to, claims in the nature of libel, slander, invasion of privacy of publicity rights, non-compliance
8 with applicable laws, license fees and the unauthorized use of copyrighted material.

9 6.16. ACTV shall provide a character-generated community calendar on the public access channel(s) for
10 the purpose of announcing programming and access services, making public service announcements, and
11 allowing the Town, schools or other non-profit organizations to make certain announcements. The
12 community calendar shall be updated regularly and appropriately to serve cable subscribers in the best
13 fashion. The community calendar will be transmitted when regular programming is not scheduled.

14 6.17. ACTV will maintain workers' compensation, liability, general comprehensive and non-owned vehicle
15 liability insurance coverage in force throughout the course of this Agreement naming the Town as co-
16 insured and will provide the Town with certificates of insurance annually.

17 6.18. ACTV will be responsible for locating and arranging for use of its facilities, including payment of
18 rent, for the PEG access purposes under this contract, except that ACTV shall not have to pay for or
19 maintain any Town or school facilities used for PEG access purposes.

20 6.19. ACTV will maintain accounting, budget, and business systems for the management, operation,
21 protection, investment, and oversight of the facility and community access services that comply with
22 generally accepted accounting practices.

23 6.20. ACTV will provide community access services to those who live, work or attend school in Amherst
24 on a first-come, first-served, non-discriminatory basis using ACTV facility, equipment, staff and other
25 resources as ACTV deems necessary and appropriate to fulfill community access management needs.

26 27 Section 7: OBLIGATIONS OF THE CONTRACTING AUTHORITY

28 7.1. The Contracting Authority shall insure that the terms and financial arrangements regarding PEG access in
29 the Renewal License are executed and implemented in a timely manner.

30 (a) The Access Provider shall receive funding support provided in the License Agreement between the
31 Contracting Authority and Cox Communications effective July 1, 1996, specifically in sections 7.2 and 7.4,
32 but excluding section 3.2(j).

33 (b) It is the intent of the Contracting Authority to retain the franchise fee of \$0.50/subscriber received
34 under the terms of Section 8.1 of the License Agreement between the Town and Cox Communications for
35 the use of the Contracting Authority in enforcing the provisions of the License Agreement. It is further the
36 intent of the Contracting Authority to make this money available to the Access Provider if unused or

uncommitted by the Cable Advisory Committee by March 1 of each year. Action to accomplish any necessary transfer shall be taken at the spring Town Meeting.

7.2. The Contracting Authority shall be responsible for advising ACTV on policies, guidelines and programming the governmental access channel.

7.3. The Contracting Authority will assume responsibility for insuring equipment used to meet the needs of the PEG channels.

7.4. The Contracting Authority shall designate an individual to serve on the Board of Directors of ACTV.

7.5. The Town is a governmental entity that is subject to the Public Records laws of the Commonwealth. The Town will comply with that law and will honor all public records requests submitted to it relating to all aspects of this Agreement.

7.6. The Contracting Authority retains the right to audit ACTV's financial affairs at the Town's expense. ACTV shall cooperate in the preparation of such audit.

7.7. The Town shall not consider the content of public access programming, including the producer's choice of subject matter and the point of view expressed, in making any decision regarding the allocation or appropriation of funds for ACTV, or the termination of this contract.

7.8. The Town shall, at its sole cost and expense, but only to the extent lawful for local governments, indemnify and hold harmless ACTV against any claims arising out of the Town's breach of this contract. Indemnified expenses shall include but not be limited to all out-of-pocket expenses such as attorney's fees.

7.9. The Contracting Authority will consult with ACTV before making any purchases of capital equipment to be used for PEG access.

7.10. ACTV may at any time file a written complaint with the Contracting Authority concerning operations of the cable system that have a bearing on ACTV's performance under this Contract. The Contracting Authority shall investigate said complaints pursuant to the manner spelled out in the Renewal License and/or other rules or regulations established by the Town.

Section 8. OBLIGATIONS OF THE PUBLIC SCHOOLS

8.1. The Public Schools shall be responsible for providing funds for the programming of the educational access channel.

8.2 The Public Schools shall designate an individual to serve on the Board of Directors of ACTV.

8.3. The Public Schools will consult with ACTV before making any purchases of capital equipment to be used for educational access.

Section 9: PERFORMANCE EVALUATION HEARINGS

Every two (2) years ACTV shall take part in a Performance Evaluation Hearing. ACTV will be provided ninety (90) days notice of such hearing. The purpose of said hearing shall be to determine whether ACTV is performing its responsibilities pursuant to this Agreement including, without limitation, public access programming, managing the annual payments for PEG access, training residents and scheduling the PEG

1 channels. The Contracting Authority shall prepare a report after each said hearing, which shall be available to
2 ACTV and the general public. Problem areas identified at the public hearings and in the Town's report shall
3 be addressed by ACTV in a timely manner. After the first performance evaluation hearing, the frequency of
4 said hearings may be changed to the fifth (5th) and eighth (8th) year(s), by the advance mutual written
5 Agreement of the parties.

6 7 Section 10: SEVERABILITY

8 If any section, sentence, paragraph, term or provision of this Agreement is determined to be illegal, invalid or
9 unconstitutional by any court of competent jurisdiction in the Commonwealth of Massachusetts or by any state
10 or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity
11 of any other Section, sentence, paragraph, term or provision, hereof.

12 13 Section 11: MISCELLANEOUS

14 11.1. At all times during the Agreement term, should the parties hereto agree that equipment necessary for
15 operation of the Institutional Network is to be located within the facilities of ACTV, the Town shall have
16 the right to establish and enforce, and ACTV will comply with and implement, rules and procedures that
17 the Town deems appropriate and necessary for purposes of data security, including physically locking, and
18 regulating access to, whatever space may house the equipment holding or transmitting such data. The
19 Town will be given physical access to such space(s) during the Agreement term.

20 11.2. This Agreement is the entire Agreement of the parties and supersedes all prior negotiations,
21 Agreements, or contracts whether written or oral.

22 11.3. ACTV shall not assign or transfer any interest in this Agreement without prior written consent of the
23 Town, provided, however, that nothing herein shall prevent ACTV from subcontracting the performance of
24 any provision or obligation required by this Contract, as long as ACTV remains primarily responsible to
25 the Town for the performance of such provision or obligation.

26 11.4. This Agreement may be amended upon the mutual Agreement of the Town and ACTV. Amendments
27 shall be in writing and effective upon execution by duly qualified officers of the Town and ACTV.

28 11.5. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of
29 Massachusetts. The parties hereto subject themselves to the jurisdiction of the courts of the Commonwealth of
30 Massachusetts, county of Hampshire, for the resolution of any dispute, action or suit arising in connection
31 with this Agreement.

32 11.6. Any notice required to be given or served upon any party in connection with this Agreement shall be
33 in writing and shall be deemed to have been given and received a) three business days after the registered
34 or certified letter containing the notice, properly addressed, with the postage prepaid, is deposited in the
35 United States Mail; or b) if made in any other manner, upon the actual delivery to and receipt by the party
36 to whom it is addressed. Notice shall be given to the parties at the following addresses:

SIGNATURE PAGE

For the Town:

For Amherst Community Television, Inc.

Town Manager

President

Clerk

Date: _____, 1996